

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 03-15-SLR
)
MILES CHARLES,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Defendant Miles Charles moves to suppress all evidence obtained on January 12, 2003 as the result of a traffic stop of an automobile that he was driving. (D.I. 9) An evidentiary hearing was held on April 16, 2003, with one witness testifying. (D.I. 15) Post-hearing briefing is complete. (D.I. 16, 17, 18) The court has jurisdiction pursuant to 18 U.S.C. § 3231. For the reasons that follow, defendant's motion to suppress is denied.

II. BACKGROUND

Pursuant to Federal Rules of Criminal Procedure 12(e), the following constitutes the court's essential findings of fact. Delaware State Trooper Benjamin Chaffinch ("Chaffinch") has been a trooper for two years and prior to that had been a Seaford, Delaware police officer for three years. (D.I. 15 at 3-4) As part of his police officer training, Chaffinch learned to operate a radar gun. (Id.) Chaffinch has used the same type of radar for three years. (Id. at 21) He also took a special 40 hour

course regarding the prosecution and investigation of driving under the influence ("DUI") cases. (Id. at 10) Chaffinch has conducted between 100 and 300 DUI investigations during the last five years. (Id. at 5)

At the beginning of his shift on January 12, 2003, Chaffinch tested his radar equipment with tuning forks to ensure it was working properly. (Id. at 5-6) Two tuning forks are used because the radar is certified at different miles per hour. (Id. at 24) One fork is a four miles per hour tuning fork and the other is a 25 miles per hour tuning fork. The two forks are used to calibrate the actual radar unit located in Chaffinch's car. (Id. at 24-25) Calibration takes about two to three minutes. (Id. at 25-26) The radar is located on the rear-view mirror in the center of the car and faces the windshield towards oncoming traffic. (Id. at 27) When the radar is operating on the moving mode, the patrol car also has to be calibrated. (Id. at 28) Chaffinch calibrated his vehicle last on November 8, 2002. (Id. at 30) Although Chaffinch was served with a subpoena to produce the State Police Training Manual for the evidentiary hearing, he did not produce the manual until after the hearing.

At 12:57 a.m. Chaffinch was on duty traveling southbound in a marked state police car on U.S. 13 about two miles south of Seaford, Delaware. (Id. at 5, 7) He was operating his radar in the moving mode. Chaffinch observed a vehicle ("Honda")

traveling north on U.S. 13 at a high rate of speed.¹ Chaffinch clocked the Honda traveling 74 miles an hour in an area with a posted limit of 55 miles per hour. (Id. at 5) When he obtained the radar reading, Chaffinch was about 500 feet from the Honda. (Id. at 32) Chaffinch negotiated a U-turn in a cross-section of the road and began to pursue the Honda northbound. (Id. at 6)

During the pursuit, Chaffinch never lost sight of the Honda. Chaffinch followed the Honda and observed it speed up behind another vehicle traveling north. (Id. at 7) Chaffinch watched as the Honda sped up to the car and then jerked into the left from the right lane. The Honda then returned to the right lane directly in front of the car it had just passed. When the Honda moved out of the lane it did not use its signal nor was the signal used when it pulled in front of the other vehicle. (Id. at 7)

Chaffinch, traveling at 60 miles an hour, caught up to the Honda and then paced it for a few moments before activating his emergency equipment. (Id. at 7-8)) As he pursued the Honda, Chaffinch observed the driver ("defendant") lean over toward the passenger compartment. (Id. at 8) Chaffinch also saw defendant bend over at the waist. These movements caused Chaffinch to conclude that the driver was either trying to hide something or

¹Although Chaffinch could not determine the model of the car, he could tell it was a dark color Honda. (Id. at 6)

trying to pick up something from the floor. (Id.)

With his emergency lights activated, Chaffinch pursued the Honda for about a mile and a half before defendant pulled along the shoulder into an abutting parking lot. (Id. at 9, 33) Chaffinch radioed dispatch about the stop, vehicle make, license plate number and number of people inside. (Id. at 9) Chaffinch stopped his car, approached the Honda and requested defendant's license, registration and proof of insurance. (Id. at 10) Although defendant had rolled down the window to speak with Chaffinch, defendant was leaning toward the center console in an attempt to create extra room between them. Chaffinch smelled alcohol coming from defendant. (Id. at 10-11) Chaffinch told defendant that he had been driving 74 miles an hour in an area with a posted speed limit of 55 miles per hour. (Id. at 11) Defendant denied traveling quite as fast.

The alcohol smell caused Chaffinch to administer some tests to determine if defendant was intoxicated. (Id. at 12) Chaffinch conducted three standard state police pre-exit tests.² Defendant failed the first test, passed the second and scored on the impairment side for the third test. (Id. at 12-15) Based on this performance, Chaffinch requested that defendant exit his vehicle for further tests.

²The three tests conducted by Chaffinch were: 1) the counting test; 2) alphabet test; and 3) finger dexterity test. (Id. at 12-15)

Chaffinch performed three roadside tests.³ (Id. at 15-16) After defendant failed each test, Chaffinch decided to perform a preliminary breath test.⁴ (Id. at 16) Defendant's preliminary breath test result was .12. (Id. at 17) In Delaware, a score below .08 is passing and above is a failure or DUI. (Id. at 17) Consequently, Chaffinch arrested defendant for DUI. (Id. at 17) Chaffinch conducted a search incident to the arrest and discovered several small plastic baggies inside defendant's coat pocket. (Id. at 19, 39) The baggies were empty. (Id. at 19) Chaffinch knew, however, that such baggies are used in the trafficking of illegal drugs. Chaffinch handcuffed defendant and placed him in the back of his patrol car. (Id. at 17)

Pursuant to state police practice, Chaffinch decided that defendant's car had to be towed, but first an inventory search had to be conducted. (Id. at 37) This vehicle search was conducted within five minutes of defendant's arrest. (Id. at 45) While conducting a visual examination of the Honda, Chaffinch saw a spent casing located on the driver's side floor board. (Id. at 20, 41) About four inches away from the casing, Chaffinch discovered a loaded handgun. Chaffinch seized both items. (Id.

³The three roadside tests were: 1) horizontal gaze and nystagmus; 2) walk and turn; and 3) the one-leg stand. (Id. at 15)

⁴The test is a portable machine that provides a preliminary readout of alcohol content that is not one hundred percent accurate. (Id. at 16)

at 20)

III. DISCUSSION

Defendant argues that there was no reasonable suspicion to support the traffic stop of his vehicle because the radar equipment had not been properly calibrated and, therefore, did not provide a reliable gauge of his speed of travel. (D.I. 16) The state police manual mandates that calibration be verified at speeds of 35 mph and 80 mph. Since Chaffinch did not calibrate his unit according to this requirement, defendant asserts that the reading of 74 mile per hour is not reliable. Moreover, defendant argues that the radar unit was not tested prior to and after use as required by the procedure manual. Defendant contends that Chaffinch's testimony is unreliable because he failed to comply with a defense subpoena to produce the procedure manual, purportedly because he knew he had not conformed with state police guidelines.

The government argues that Chaffinch had reasonable suspicion to stop defendant's car based on the radar reading and his observations of defendant's driving. (D.I. 17) Specifically, defendant's driving at 19 miles above the posted speed limit violates 21 Del. Code § 4169 and changing lanes without signaling violates 21 Del. Code §§ 4155 and 4102. The government advises that Delaware law permits the use of radar to establish speeding violations and, therefore, can be used as a

basis for a traffic stop. See State v. Moffitt, 100 A.2d 778 (Del. Super. 1953). To clarify the discrepancies between Chaffinch's testimony and state police procedure, the government offers the affidavit of Delaware State Police Corporal Leslie Dick ("Dick"). Dick explains that the manual relied on by the defense pertains to a different type of radar than the one used by Chaffinch.

Although the government and defendant debate the radar reading, correct calibration procedure and manual as well as Chaffinch's failure to produce the manual in a timely fashion, the court finds it unnecessary to consider these issues because the officer's observations of defendant's driving are sufficient to support the stop of the vehicle. Whren v. United States, 517 U.S. 806, 819 (1996) (a stop of a vehicle is reasonable when a law enforcement officer has probable cause to believe that a violation of a traffic law has occurred); Scott v. United States, 436 U.S. 128, 136 (1978); Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001); United States v. Nelson, 284 F.3d 472, 482 (3d Cir. 2002); United States v. Givan, 320 F.3d 452, 458 (3d Cir. 2003). The court finds credible Chaffinch's testimony that he observed defendant driving quickly, with jerking movements from lane to lane and without using mandatory signaling. Once defendant's vehicle was stopped, the alcohol odor, failure of the pre-exit, road and breathalyzer tests created probable cause to

arrest for DUI. The search of defendant's vehicle was an appropriate search incident to a lawful arrest. See New York v. Belton, 453 U.S. 454 (1981).

IV. CONCLUSION

At Wilmington, this 23rd day of July, 2003 for the reasons stated;

IT IS ORDERED that defendant's motion to suppress is denied.
(D.I. 9)

Sue L. Robinson
United States District Judge